

**UNITED STATES GOVERNMENT BEFORE THE NATIONAL LABOR RELATIONS
BOARD
REGION 13**

Loretto Hospital

Employer

And

Case 13-UC-396

Service Employees International Union Local 20

Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation¹ and consideration took place. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this matter to the undersigned Regional Director.²

I. Issues

The Petitioner seeks to clarify the existing bargaining unit it represents by including the position of Emergency Room Greeter, which has been occupied by Sandra Shackelford since October 6, 2003.³

The Petitioner contends that the position of Emergency Room Greeter falls within the scope of the collective bargaining agreement. The Petitioner also asserts lack of knowledge that the position of Emergency Room Greeter existed until sometime in June, 2006.⁴ The Employer

¹ The undersigned finds that a hearing on this petition is not required, inasmuch as the investigation disclosed sufficient undisputed facts upon which to base a determination in this matter.

² Upon the entire evidence of the investigation, the undersigned finds: that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

³ Petitioner's petition filed on July 18, 2006, and amended on July 25, 2006, seeks to add a single employee to the Service and Maintenance unit of about 98 employees which it currently represents.

⁴ The current Agreement between Loretto Hospital and Local 20, Service Employees International Union, is effective January 1, 2005 through December 31, 2007.

⁵ The Petitioner asserts that at that time it learned of the existence of the position from a steward who raised the issue of the position's placement within the unit.

maintains that the Petitioner's unit clarification request is untimely. The Employer also asserts that the position of emergency Room Greeter has never been included in the bargaining unit, and that the duties of that position are distinct from the duties performed by bargaining unit employees.

II. Decision

As will be more fully discussed below, I decline to clarify the unit to include the position of Emergency Room Greeter as requested by Petitioner. The petition is untimely raised in mid term of a collective bargaining agreement where the position of Emergency Room Greeter, which it seeks to include, existed prior to the negotiations for the current agreement, and no changes have occurred to the duties of the position.

Accordingly, IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

III. Statement of Facts

The parties have a long standing relationship. The Petitioner has represented this unit since about 1994, originally as SEIU Local 73 HC, and subsequently rechartered as Local 20. The bargaining unit in the current collective bargaining agreement is set forth in Article I, Section 1, Recognition, as follows:

Unit: All full-time and regular part-time and regularly scheduled on-call service and maintenance employees/non-professional employees including: Dietary Aides, Cooks, Dietary Clerks, Housekeepers, Environmental Service Aides I, environmental Service Aides II, Laundry Workers, Maintenance Employees, In House Couriers, Central Supply Clerks, Ward Clerks, Department Secretaries, Medical Secretaries, Certified Nurses Assistants, Expressive Therapy Aides, Medical Transcriptionists, Phlebotomists, Staff Assistants, Lab Receptionists, and Secretaries located in: Physical Therapy, Medical Lab, Mental Health Outpatient Clinic, Addictions Unit, Cardio-Pulmonary Services and the Ambulatory Care Clinic; but excluding the Chef, Nutritional Services Supervisors, Shift Supervisor in Environmental Services Department, Office Supervisor in Outpatient Mental Health Clinic, Lead Phlebotomist, all Professional Employees, Registered Nurses, Technical Employees, Business Office Clericals, Engineers, Guards and Supervisors as defined by the National Labor Relations Act.

The position of Emergency Room Greeter is not specified in this unit. The Employer's position description for the Emergency Room Greeter shows that the position was approved on August 25, 2003 and filled on October 6, 2003 by Sandra Shackelford. From September, 2004 through July, 2005, Kerry Moore was also an Emergency Room Greeter; however, he was promoted in July, 2005 to the position of Patient Care Technician, a non-unit position. Since July, 2005, the classification of Emergency Room Greeter has been frozen at one position to correspond to need

⁶The Employer maintains that mid term in the collective bargaining agreement, Petitioner seeks to include a position that existed with unchanged duties since August 25, 2003, prior to the negotiations for the current agreement.

and budgetary requirements; and the Employer maintains that only one Emergency Room Greeter is needed in the reasonably foreseeable future. Organizationally this position resides within the Emergency Department. There are no unit employees in the Emergency Department. Besides the Greeter, the only other classifications in that department are Registered Nurses (14.2 positions) and Patient Care Technicians (9.5 positions). The Employer maintains that the duties⁷ of the Emergency Room Greeter have never changed, and that none of those duties are performed in any bargaining unit classification.

There is no history of discussions by the parties or grievances by the Petitioner concerning the position of Emergency Room Greeter. While the Petitioner questioned the placement of a position in the storeroom during negotiations for the current agreement⁸, it is undisputed that the placement of the Emergency Room Greeter did not arise and was not discussed during negotiations for the current agreement although the position had been occupied for one year at the commencement of the negotiations⁹. Petitioner maintains that the issue of the placement of the Emergency Room Greeter was raised in about June, 2006 by its steward who had participated in negotiations for the current collective bargaining agreement.

The issue concerning the placement of the Emergency Room Greeter was first raised by the Petitioner on July 10, 2006. At that time, Petitioner's representative Lucinda Scharbach met with the Employer's associate vice president of Human Resources, Ruby Smith, to discuss grievances unrelated to this issue. At the conclusion of that discussion, Scharbach asked Smith to stay to talk about the position of Emergency Room Greeter. They then discussed the duties of the Emergency Room Greeter, which Petitioner agrees are to greet patients when they come to the Emergency Room and direct them to the appropriate triage nurse. Scharbach asked Smith to include the Emergency Room Greeter in the bargaining unit, maintaining that the Emergency Room Greeter is a non supervisory service and maintenance position. However, Smith declined to agree to this request, asserting that the Emergency Room Greeter was not a newly created position. Scharbach told Smith that she would file a unit clarification petition for the position of Emergency Room Greeter. The parties did not discuss the matter again.

IV. Analysis

The petition in the instant case is untimely being filed in the mid-term of a collective bargaining agreement that does not expire until December 31, 2007. Absent special circumstances not found in the present matter¹⁰, the Board refuses to clarify a unit in the middle of a contract term when

⁷ Essentially, these duties are to coordinate communication between Emergency Room staff and patients and their families; to facilitate patient access to the Emergency Room triage nurse; and to address customers' concerns about Emergency Room staff, procedures, and facilities.

⁸ The Petitioner subsequently filed a unit clarification petition on June 13, 2005 regarding the storeroom position in Case 13-UC-388, which was withdrawn August 25, 2005.

⁹ Negotiations took place from October, 2004 to March, 2005.

¹⁰ A unit, however, may be clarified midterm where there is a newly created position, where an existing position has undergone substantial post agreement changes, where employees are performing a new operation, or to determine supervisory status of certain classifications. See e.g. *Crown Cork and Seal Co.*, 203 NLRB 171 (1973); *Western Colorado Power Co.*, 190 NLRB 564 (1971). The Board will also entertain UC petitions shortly after a contract is executed where the parties could not reach agreement on the disputed classification and the petitioner did not

the objective is to change the composition of an agreed-upon unit by the exclusion or inclusion of employees. The rationale for refusing to grant mid-term clarifications is that granting a clarification petition at such a time would be disruptive of the parties' bargaining relationship. *Edison Sault Electric Co.*, 313 NLRB 753 (1994); *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977).

In this case, the Emergency Room Greeter position is not newly created, it has not undergone any recent changes, and its placement does not involve any issues of statutory mandated unit exclusions. It existed prior to the contract negotiations, the placement of the Emergency Room Greeter position was not raised or discussed in the negotiations. Accordingly, I decline to clarify the bargaining unit to include the position of Emergency Room Greeter mid term in the collective bargaining agreement as the clarification would be disruptive of the parties bargaining relationship.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **September 11, 2006**

DATED at Chicago, Illinois this 28th day of August, 2006.

/s/ Gail R. Moran
Acting Regional Director National
Labor Relations Board Region 13
209 South La Salle Street, Suite 900
Chicago, Illinois 60604

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exchange its position on the classification for concessions in negotiations or to avoid a possible incongruent arbitration award concerning the disputed classification. *St. Francis Hospital*, 282 NLRB 950 (1987); *Zielger, Inc.*, 333 NLRB 949, 950 (2001).